

interlocutory injunction suspending or restraining enforcement, operation or execution of any statute of this State by restraining the action of any Officer of the State in the enforcement of such statute, shall be granted by any trial court or judge thereof on the ground of the unconstitutionality of such statute, unless the petition has been on file at least five days and the opposite party or parties and the Attorney General shall have had at least three days notice thereof, not counting the day of hearing or filing of such suit; Section 3-c providing for appeal direct to the Supreme Court from interlocutory injunctions suspending or restraining the enforcement of any statute of the State pertaining to the revenue laws of the State or to enforcement of any criminal law thereof; and empowering the Legislature to provide direct appeal to the Supreme Court from any other order of the trial court granting an interlocutory injunction or permanent injunction on the ground of the unconstitutionality of any statute of this State; and Section 3-c providing that the Supreme Court may exercise original jurisdiction in direct proceedings filed by the Attorney General of Texas in the Supreme Court with the consent of the Court to prohibit judges of district courts from issuing and enforcing interlocutory injunctions or restraining orders restraining the enforcement of any revenue or criminal law of this State on the ground of its unconstitutionality, in instances where there is no issue of facts involved.

Referred to Committee on Constitutional Amendments.

Adjournment

Senator Collie moved that the Senate adjourn until 10:00 o'clock a. m. tomorrow.

The motion prevailed; and the Senate, accordingly, at 1:35 o'clock p. m., adjourned until 10:00 o'clock a. m. tomorrow.

SECOND DAY

(Wednesday, January 11, 1939)

The Senate met at 10:00 o'clock a. m., pursuant to adjournment, and was called to order by President Woodul.

The roll was called, and the following Senators were present:

Aikin	Moore
Beck	Nelson
Brownlee	Pace
Burns	Redditt
Collie	Roberts
Cotten	Shivers
Graves	Small
Hardin	Spears
Head	Stone
Hill	of Galveston
Isbell	Stone
Kelley	of Washington
Lanning	Sulak
Lemens	Van Zandt
Martin	Weinert
Metcalf	Winfield
Moffett	

A quorum was announced present.

Father Theodore Drees, Chaplain, offered the invocation.

On motion of Senator Metcalfe and by unanimous consent, the reading of the Journal of the proceedings of yesterday was dispensed with and the Journal was approved.

Senate Bills on First Reading

The following Senate bills were introduced, read severally first time, and referred by the President to the committees indicated:

By Senator Van Zandt:

S. B. No. 17, A bill to be entitled "An Act creating a State Bar, constituting it an administrative agency of the judicial department of the State, defining the powers thereof, prescribing the membership thereof, and prohibiting those not members from practicing law; empowering the Supreme Court to adopt and promulgate rules and regulations for the admission to the practice of law, disciplining, suspending, and disbarring attorneys at law; for the conduct of the State Bar; prescribing a code of ethics governing the conduct of the members; prescribing and limiting the fees to be paid by members, collection and disbursement thereof; preserving the right of trial by jury in disbarment proceedings; providing for repeal of all laws in conflict; and declaring an emergency.

Referred to Committee on Civil Jurisprudence.

By Senator Roberts:

S. B. No. 18, A bill to be entitled "An Act making an appropriation of

the sum of two hundred and fifty thousand dollars (\$250,000.00), or so much thereof as may be necessary, out of any funds in the State Treasury, not otherwise appropriated, to pay the contingent expenses, and to pay the mileage and per diem of members and the per diem of officers and employees of the Regular Session of the Forty-sixth Legislature, and to pay any unpaid accounts of the Second Called Session of the Forty-fifth Legislature, and declaring an emergency.

Referred to Committee on Finance.

Senate Resolution 6

Senator Collie offered the following resolution:

Whereas, The attention of the Senate has been called to a number of grievous and allegedly illegal practices now and heretofore engaged in by public officials in various sections of this state; and

Whereas, The financial condition of this state is dependent upon the honest enforcement of its revenue laws and the collection of taxes, licenses, fees, and other revenues; and

Whereas, There have been reported many evasions of these revenue laws, and many violations of other laws of this State, and many of such violations and evasions are alleged to have been committed with the knowledge and connivance of some officers in this state; and

Whereas, Past experience has proven that a saving of millions of dollars may be made to the taxpayers of Texas by the existence at all times of a standing General Investigation Committee; and

Whereas, The Forty-sixth Legislature will only be in session a few months and there should be some restraining agency and investigating committee existing during the interim between adjourning of this Legislature and the convening of the Forty-seventh Legislature, and it is the purpose of this resolution to authorize the appointment of such committee and to empower said committee to investigate any and all law violations in this State which pertain to, or in any way affect the general welfare, as well as the administration of State laws and departmental activities.

Now, Therefore, Be it resolved by the Senate of the State of Texas:

Section 1. That the Lieutenant Governor be, and he is hereby au-

thorized to appoint a committee of five Members of the Senate to sit at such times and places between this date and the date of the convening of the Regular Session of the Forty-seventh Legislature, as may to said committee seem necessary and proper; and the committee shall continue the inquiries heretofore begun by the committee authorized and appointed at the Regular Session of the Forty-fifth Legislature relative to law violations and the administration of all State laws and any of the matters pertaining to or affecting the revenues of the State government and the expenditures of taxes, fees, and assessments, and to inquire into any other affairs and activities of governmental departments and institutions of whatever kind and character, as such activities in any way affect the financial or other welfare of the government and the citizens of Texas. Said committee shall make a study of any other governmental activity, and shall have authority to investigate and inquire into any such matters.

Sec. 2. That said committee shall have the power to formulate its own rules of procedure and evidence, and to provide for its own hours of meeting, recessing, and adjourning. Provided, however, that the rules of evidence to be followed shall be practically the same as followed in the courts of this state, and the committee is authorized to hold executive sessions, within its discretion, and then the committee may be governed by the rules of evidence applicable to any grand jury inquiry in this State.

Sec. 3. That the committee shall have power to issue process for witnesses to any place in this State, and to compel their attendance, and produce all books and records, and upon disobedience of any subpoena the said committee shall have power to issue attachments which may be addressed to and served by either the sergeant-at-arms appointed by said committee or any sheriff or any constable of this State; and said committee shall have authority to cite for contempt any one disobeying said process and to punish for such contempt in the same manner as provided for by general law. Said committee shall have power to inspect and make copies of any books, records, or files of the departments and institutions and any and all other instruments and documents pertinent to the matter under investigation by said committee, in-

cluding any county or political subdivision of this State, and shall also have power to examine and audit the books of any person, firm, or corporation having dealings with departments and institutions and any and all officers or employees of the departments and institutions under investigation by said committee. The committee shall have power to administer oaths and affirmations and fix the bonds of attached witnesses; and the committee shall further have all the powers necessary in order to accomplish the purposes for which it is appointed. Three members of such committee shall constitute a quorum for the transaction of official business.

Sec. 4. The witnesses attending under process shall be allowed the same mileage and per diem as is allowed witnesses before any grand jury in this State.

Sec. 5. Said committee shall have power and authority to employ and compensate all necessary investigators, auditors, clerks, stenographers, and any other necessary employees, and it shall be the duty of said committee to make and keep a record of its investigations.

Sec. 6. That said committee may call upon the Attorney General's Department, Auditing Department, and all other departments for assistance and advice, and it shall be the duty of the Attorney General's Department to render opinions, give counsel and assistance to said committee on request of chairman or members of said committee.

Sec. 7. That said committee shall submit a report in writing to the Forty-seventh Legislature, and make such recommendations as it may choose to make. The compensation and expenses herein provided for incident to the work of such committee shall be paid out of the appropriation for mileage and per diem and contingent fund of the Forty-sixth Legislature and out of any fund otherwise appropriated by said session of said Legislature for such purpose, upon sworn account of persons entitled to such pay, when approved by the chairman of said committee; and sufficient money is hereby appropriated out of the mileage and per diem and contingent fund of said Forty-sixth Legislature to meet the payment of such per diem and expenses of the members of said committee, wit-

nesses, fees, and other expenses incident to said investigation.

Sec. 8. Said committee may include in its report its recommendation of any legislation that should be enacted or other action that should be taken.

Signed—Collie, Hill, Head, Isbell, Brownlee, Stone of Washington, Roberts, Weinert, Shivers, Sulak, Moore.

The resolution was read and was referred by the President to the Committee on Civil Jurisprudence.

Message from the House

Mrs. Louise Snow Phinney, Temporary Chief Clerk of the House, was recognized to present the following message:

Hall of the House of Representatives,
Austin, Texas,
January 10, 1939.

Hon. Walter F. Woodul, President of the Senate.

Sir: I am directed by the House to inform the Senate that the House has passed the following resolutions:

S. C. R. No. 1, Adopting the joint rules of the House and Senate of the Forty-fifth Legislature as the temporary joint rules of the House and Senate of the Forty-sixth Legislature.

H. C. R. No. 1, Setting the pay of the Members of the Regular Session of the Forty-sixth Legislature.

H. C. R. No. 2, Providing for a joint session of the House of Representatives on Wednesday, January 11, 1939, for the purpose of hearing the message of His Excellency the Honorable James V. Allred, Governor of the State of Texas. The following committee has been appointed from the House to escort the Governor: Messrs. Morris, Thornton, Ferguson, Harde-
man and Wood.

H. C. R. No. 3, Providing for a joint session of the House of Representatives and the Senate on Thursday, January 12, 1939, for the purpose of counting the votes and certifying the election of the Governor and the Lieutenant Governor.

H. C. R. No. 4, Providing for a joint legislative committee to make arrangements for the inauguration of the newly elected Governor and Lieutenant Governor.

The following members have been appointed on the part of the House: Messrs. Leonard, Johnson of Tarrant, Alsup, Thornberry and Boyd.

Respectfully submitted,

LOUISE SNOW PHINNEY,
Chief Clerk, House of Representatives.

Report of Standing Committee

Senator Roberts, by unanimous consent, presented at this time the following report:

Senate Chamber,
Austin, Texas,
January 11, 1939.

Hon. Walter F. Woodul, President of the Senate:

Sir: We, your Committee on Finance, to whom was referred

S. B. No. 18, A bill to be entitled "An Act making an appropriation of the sum of Two Hundred and Fifty Thousand Dollars (\$250,000.00), or so much thereof as may be necessary, out of any funds in the State Treasury, not otherwise appropriated, to pay the contingent expenses, and to pay the mileage and per diem of members and the per diem of officers and employes of the Regular Session of the Forty-sixth Legislature, and to pay any unpaid accounts of the Second Called Session of the Forty-fifth Legislature, and declaring an emergency,"

Have had the same under consideration, and I am instructed to report back to the Senate with recommendation that it do pass and be not printed.

ROBERTS, Chairman.

Senate Bill 18 on Second Reading

On motion of Senator Roberts, and by unanimous consent, Senate Rule No. 31a and Senate Rule No. 48 were suspended severally, to permit consideration of S. B. No. 18 at this time.

Senator Roberts moved that the constitutional rule requiring bills to be read on three several days be suspended and that S. B. No. 18 be placed on its second reading and passage to engrossment.

The motion prevailed by the following vote:

Yeas—31

Aikin	Moore
Beck	Nelson
Brownlee	Pace
Burns	Redditt
Collie	Roberts
Cotten	Shivers
Graves	Small
Hardin	Spears
Head	Stone
Hill	of Galveston
Isbell	Stone
Kelley	of Washington
Lanning	Sulak
Lemens	Van Zandt
Martin	Weinert
Metcalfe	Winfield
Moffett	

The President then laid before the Senate, on its second reading and passage to engrossment:

S. B. No. 18, A bill to be entitled "An Act making an appropriation of the sum of Two Hundred Fifty Thousand Dollars, or so much thereof as may be necessary, out of any funds in the State Treasury not otherwise appropriated, to pay the contingent expenses, and to pay the mileage and per diem of members and the per diem of officers and employees of the Regular Session of the Forty-sixth Legislature, and to pay any unpaid accounts of the Second Called Session of the Forty-fifth Legislature, and declaring an emergency."

The bill was read second time and was passed to engrossment.

Senate Bill 18 on Third Reading

Senator Roberts moved that the constitutional rule requiring bills to be read on three several days be suspended and that S. B. No. 18 be placed on its third reading and final passage.

The motion prevailed by the following vote:

Yeas—31

Aikin	Isbell
Beck	Kelley
Brownlee	Lanning
Burns	Lemens
Collie	Martin
Cotten	Metcalfe
Graves	Moffett
Hardin	Moore
Head	Nelson
Hill	Pace

Redditt
Roberts
Shivers
Small
Spears
Stone
of Galveston

Stone
of Washington
Sulak
Van Zandt
Weinert
Winfield

The President laid S. B. No. 18 before the Senate on its third reading and final passage.

The bill was read third time and was passed by the following vote:

Yeas—31

Aikin
Beck
Brownlee
Burns
Collie
Cotten
Graves
Hardin
Head
Hill
Isbell
Kelley
Lanning
Lemens
Martin
Metcalfe
Moffett

Moore
Nelson
Pace
Redditt
Roberts
Shivers
Small
Spears
Stone
of Galveston
Stone
of Washington
Sulak
Van Zandt
Weinert
Winfield

House Concurrent Resolution 2

The President laid before the Senate:

H. C. R. No. 2, Providing for a joint session of the House and Senate at 10:30 o'clock a. m. Wednesday, January 11, 1939, to hear an address by Governor James V. Allred.

The resolution was read.

On motion of Senator Moore, and by unanimous consent, the rule requiring concurrent resolutions to be referred to a committee was suspended, and the resolution was considered at this time and was adopted.

House Concurrent Resolution 1

The President laid before the Senate:

H. C. R. No. 1, Fixing the per diem of Members of the Forty-sixth Legislature for the Regular Session of said Legislature.

On motion of Senator Roberts, and by unanimous consent, the rule requiring concurrent resolutions to be referred to a committee was suspended,

and the resolution was considered at this time and was adopted.

Motion to Reconsider

Senator Sulak moved to reconsider the vote by which the resolution (S. R. No. 3) providing for temporary rules of the Senate was adopted on yesterday.

Question—Shall the motion to reconsider prevail?

Committee to Escort the Governor

Senator Aikin, by unanimous consent, moved that a committee of three Senators be appointed to escort the Governor to the Speaker's stand in the House of Representatives to deliver his message to the joint session to be held today pursuant to H. C. R. No. 2.

The motion prevailed.

Accordingly, the President appointed Senators Aikin, Moffett and Beck as a committee to escort the Governor to the Speaker's stand.

Joint Session

The President announced that the hour had arrived for the joint session of the two Houses, to be held pursuant to H. C. R. No. 2, to hear the address of Governor James V. Allred.

The Senate, accordingly, at 10:30 o'clock a. m., proceeded to the Hall of the House of Representatives.

The Senators were admitted to the House and escorted to seats prepared for them along the aisle.

The President of the Senate occupied a seat on the Speaker's stand.

Hon. Homer Leonard occupied the Speaker's chair and served as the Presiding Officer of the House during the joint session.

Mr. Leonard announced that the two Houses were in joint session for the purpose of hearing an address by Hon. James V. Allred, Governor of Texas.

The roll of the House was called, and a quorum of its membership was announced present.

The roll of the Senate was called, and the following Senators were present:

Aikin	Moore
Beck	Nelson
Brownlee	Pace
Burns	Redditt
Collie	Roberts
Cotten	Shivers
Graves	Small
Hardin	Spears
Head	Stone
Hill	of Galveston
Isbell	Stone
Kelley	of Washington
Lanning	Sulak
Lemens	Van Zandt
Martin	Weinert
Metcalfe	Winfield
Moffett	

Hon. James V. Allred was announced at the bar of the House, and was duly admitted and escorted to the Speaker's stand by Senators Aikin, Beck and Moffett and by a committee of five Members of the House.

Mr. Leonard presented Governor James V. Allred to the joint session.

Governor Allred then delivered to the Legislature the following address and message:

Austin, Texas,
January 10, 1939.

To the Members of the Forty-sixth Legislature:

Conditions change with passing years but the processes of democratic government remain the same. As part of that process you are here today as the people's representatives to begin the 93rd year of Texas statehood. No greater opportunity for service was ever presented than that accorded legislative representatives of the people. Their hopes are in you; through you alone can those hopes be translated into actuality. I congratulate you sincerely upon your election and the opportunity which is yours for service to Texas.

Article 4, Section 9, of the Constitution of Texas requires the Governor "at the commencement of each session of the Legislature and at the close of his term of office" to give to the Legislature "information by message of the condition of the State." It also requires him to account for all public moneys received and paid out by him from any funds subject to his order, with vouchers; and to accompany his message with a statement of the same. This account is attached to this message and made a part of same to your information.

Ordinarily little attention is paid to the recommendations of an outgoing chief executive. Indeed I find little precedent for exhaustive messages by a retiring Governor. The framers of the Constitution were not without good reason, however, for requiring the Governor to give information to the Legislature as to the condition of the State at the close of his term of office. After four years of service, he cannot but be a wiser man; and his experience and observations, without intruding upon the prerogatives of his successor, should be of tremendous benefit to all.

Any report as to "the condition of the State" necessarily carries with it a reminder of conditions confronting the State at the time of my inaugural and a brief resume of what has been done to meet those conditions. Four years ago Texas had no old age pension assistance law, no unemployment compensation law, no authority for or guarantee of social security whatever. At that time unemployment, want and poverty were rife throughout the State. The State Government commanded little respect of confidence, a general condition of lawlessness prevailed, the liquor traffic was not only not regulated but operating flagrantly in violation of the law. Our eleemosynary institutions were overcrowded and undermanned, our jails overflowing with insane. Real estate was taxed to the limit of the Constitution and beyond the point of ability to pay. The school fund was in a deficit and unable to meet even the minimum per capita.

During the past four years we have gone far toward meeting these problems; and while neither legislation nor administrative authority has been perfect, yet, on the whole, our efforts have been successful and "the condition of the State" is vastly improved.

The past four years might well be termed the pioneer age in social security in Texas. Today Texas not only has old age assistance and unemployment compensation, but authority to provide for the needy blind, for dependent and neglected children and retirement for our school teachers as well. Unemployment has been radically reduced and conditions generally improved through operation of the State Employment Service.

A safety program has been inaugurated, and law and order restored, through a public safety department, second to none in the Union, manned by courteous, intelligent and honest

officers—men of whom all are proud. Clemency has been placed upon a merit basis, a humane program carried farther than ever before in the State Prison System, with resulting faith and confidence in the State Government. The prohibition amendment has been repealed, strict regulation substituted, resulting not only in increased revenues but in a more intelligent approach to the problem.

The greatest general building and civic improvement program in the history of the State has been carried on, with the help of the Federal Government. Our insane asylums and other eleemosynary institutions have had more additions than in any other like period of time. A great Centennial celebration has been staged, appropriate monuments and markers erected throughout the State and, with the assistance of the National Youth Administration and the State Highway Department, we have built hundreds of beautiful roadside parks. The deficit in the school fund has been wiped out, the per capita apportionment increased to the highest figure in history, appropriations for institutions of higher learning and all other educational enterprises substantially increased and, at the same time, the school ad valorem tax rate was cut from 35¢ to 7¢, the lowest it has been in over twenty years.

There are many "carry over" members of the Forty-sixth Legislature who have been a part of the progressive program of the past four years. I am sure they share with me a pardonable pride in what has been accomplished. We must, however, "think little of past achievements" and, with the incoming Governor and newly elected Senators and Representatives, "much of what is to be accomplished."

Old Age Assistance

As of January 1, 1939, approximately 114,500 persons over 65 years of age are on the rolls drawing an average allotment of \$13.80 per month. This is not enough. There are many borderline and worthy cases which should be on the rolls, which would have been on the rolls had the money been made available by the Legislature.

As you are aware repeated, though unsuccessful, efforts were made during the past four years at both regular and special sessions to secure additional funds for old age assistance. In addition to the Governor's recommendations, the State Board of Con-

trol several times requested the Legislature to provide enough money to allow at least the average of \$19.00 per month prevailing in other states and to take care of these borderline cases.

It has been no easy task, however, to raise, as we did by additional taxation, the nine and one-half million dollars of State money to be matched by like amount of Federal assistance now going to old age assistance. Indeed, as I view the practical and political difficulties through which we have passed, I regard it as no small achievement to have provided this much money and to put even this number of people on the rolls.

My successor in the Governor's office will have his own program for maximum constitutional "pensions" to every person over 65. I have no desire to intrude upon or embarrass his program in anywise. I know, however, the practical difficulties with which he will be confronted. I know that all will not be in agreement as to the wisdom of paying "pensions" to everybody over 65 years of age regardless of their need. Therefore, I urge, indeed I pray, that the members of this Legislature, even though they may not believe in "pensions" for all, will make provision for the thousands of needy old people in Texas not yet on the rolls who need assistance; and that you will not forget that allotments to those already on the rolls should be increased if they are to have the bare necessities of life.

I feel about it now just as I did when I called the Forty-fifth Legislature into special session in September, 1937, and urged them to provide at least two million dollars more each year for the old age assistance fund.

In addition to this there is still an outstanding indebtedness against the fund of \$1,330,880.50, the balance due certain banks who purchased interest bearing warrants in the fall of 1936. These warrants were issued by order of the Legislature to tide us over the winter months until sufficient revenues should accrue under a tax bill passed at the Third Called Session of the Forty-fourth Legislature to monthly match cash provided by the Federal Government. Had this not been done, all on the rolls that winter—over a hundred thousand—would have been left destitute.

I directed this indebtedness to the attention of the Forty-fifth Legislature at the last special session and

asked them to make provision to meet it. At that time, acting upon information furnished by the Board of Control, I told the Legislature that unless this indebtedness was met it would necessitate cutting off all payments for two months. The Board of Control had agreed to pay the banks and was under a moral and legal obligation to do so. However, after the Forty-fifth Legislature failed to provide this money the Board of Control prevailed upon the banks to wait; and since that time only \$218,000.00 has been paid on the indebtedness. If they make additional payments on it, without new funds being provided, it can only result in further reducing the rolls.

It therefore becomes the duty of this, the Forty-sixth Legislature, to provide additional revenues to retire this indebtedness. I am sure you will promptly do so.

Deficit in General Fund

At the time of my inauguration on January 15, 1935, the cash deficit in the General Fund was \$9,761,878.38. At that time I pointed out to the members of the Forty-fourth Legislature that this deficit would increase and recommended that it be taken care of by levy of additional taxes. This was not done.

Again at the beginning of the regular session of the Forty-fifth Legislature in 1937, I pointed out that expenditures from the general fund exceeded its receipts an average of two and one-half million dollars per year; and that unless some provision was made the deficit would be increased at the end of the fiscal year to approximately \$15,000,000. No provision was made and the year wound up with a deficit of approximately \$15,194,000.

When I convened the Forty-fifth Legislature in special session in September, 1937, I again directed their attention to this deficit and told them that unless provision was made, it would increase to approximately \$20,000,000. The deficit actually amounts to approximately that amount at the present time.

This increase in the deficit is due to several factors: first, increased appropriations by the Legislature (even in addition to items approximating ten million dollars vetoed from the last biennium appropriation); second, a tendency on the part of the Legislature in recent years to put new burdens on the general revenue

fund (no matter how far it goes into the "red"), rather than vote new taxes to take care of new obligations.

As evidencing this, I call your attention to the three million dollar appropriation for the Texas Centennial, the tremendous increases in rural aid, the payment of relief bonds and interest and the remission of taxes to various counties in the State, such as the Brazos Valley Conservation Project, renewal of the Galveston County remission, etc. No new funds were provided to supplement these diversions from the general fund. This tendency is further evidenced by vetoed appropriations for the proposed Big Bend National Park (\$750,000.00), the Harris County tax remission bill (\$350,000.00 annually for ten years), the cotton laboratory (\$250,000.00) and the soil conservation authority act (diverting \$1,500,000 of ad valorem taxes annually).

These examples are cited to you as a predicate not only for the suggestion that provision should be made to wipe out the deficit in the General Fund, but that hereafter in voting increased appropriations or authorizing expenditures for new purposes, the revenues should be provided simultaneously.

I desire to particularly call to your attention the fact that all of the increase in the general fund deficit during my administration is more than balanced by payments made and sinking funds for relief bonds voted under the preceding administration. You will recall that in the summer of 1933 the people authorized the issuance of twenty million dollars worth of relief bonds. In the 15 months immediately preceding the beginning of my administration, sixteen and a half million dollars of these bonds had been issued and practically all of it spent. The Board of Control (the relief organization since that time) has done a splendid job in stretching the remaining three and a half million dollars out over a period of four years time. They have made it last until March 1, 1939.

In the meantime, \$10,447,008.25 has been paid in principal and interest on these bonds; in addition \$4,079,464.25 has been set aside in sinking funds to meet principal and interest payments during the coming year. So we see the increase in the deficit during my administration is more than offset by the amounts taken out of general revenue to pay on the bonds.

Relief

The question of administering relief to needy citizens of Texas continues important for the reason that there remain in Texas approximately 858,900 persons eligible for work relief and more than 150,000 unemployable needy people who would not be able to work if they had employment.

Under the National relief program, the Texas Relief Commission has received from the Federal Government approximately one hundred million dollars. In addition they have enrolled approximately 110,000 boys in the CCC program, who have received in salaries from the Federal Government more than \$25,000,000, which has gone to their needy families. The Federal Government has furnished to the Texas Relief Commission for distribution to the needy people surplus commodities worth more than \$25,000,000.

On December 31, 1935, (during the first year of this administration), the Federal Government discontinued grants to the States for direct relief. The Texas Relief Commission had a residue of Federal grants and a small balance of the \$20,000,000 bread bonds, with which they took care of the unemployables from that date to July 1, 1936. By conserving these funds the Board has paid administrative expenses incurred in certification of work relief clients, unemployable clients for surplus commodities, and needy employables out of employment, also in selecting enrollees and certification of the CCC applicants, and the supervision of distribution of surplus commodities. By reducing expenses as rapidly as possible and inducing the counties to furnish case workers, storage for surplus commodities and office space for employees, the Board has been able to continue to meet the state's obligation to the Federal Government in administering relief programs.

Since January 20, 1938, the Works Progress Administration authorities have assisted by contributing additional personnel to enable the Texas Relief Commission to carry on until such time as the Legislature could make the necessary and required appropriation to meet the State's responsibility in the relief program. The cooperative arrangement between the Texas Relief Commission and the Works Progress Administration is on a month to month basis and I am advised that this arrangement will terminate March 1, 1939. Since the

balance of the residue of Federal and State funds will be exhausted about that time, I therefore urge and recommend that the Legislature give early consideration to this problem. Necessary appropriations should be made for supervisory expenses which will enable the Texas Relief Commission to continue to meet the State's responsibility to the needy people by certification of relief clients, distribution of surplus commodities and the CCC programs in order that the relief programs may not be disrupted and the people suffer from loss of Federal funds and service.

Aid to the Blind and to Dependent Children

By vote of the people the Constitution was amended in 1937 so as to authorize the Legislature to provide for aid to the needy blind and to dependent neglected children. We need \$300,000.00 each year for aid to the blind and a million and a half dollars each year for aid to dependent children. These funds will be augmented by contributions from the Federal Government.

Both of these great needs were submitted to the Second Called Session of the Forty-fifth Legislature but that body failed to make provision. It therefore falls to your lot to provide additional revenues for these purposes.

Teachers Retirement Act

The people in 1936 likewise provided for a teachers' retirement fund whereby the contributions of teachers were to be matched by the State. The teachers have already started their contributions but as yet the State has not provided any funds whatever to meet its share. According to the State Auditor the teachers have already contributed up to the end of the fiscal year ending August 31, 1938, \$2,252,776.88. This will have to be matched by the State. In addition to this, the State Auditor estimates that \$2,475,612 will be required to match estimated contributions made for the fiscal year ending August 31, 1939, that \$2,568,448 will be required to match estimated contributions made for the fiscal year ending August 31, 1940; that \$2,661,283 will be required to match estimated contributions made for the fiscal year ending August 31, 1941.

It is the duty of this Legislature to provide means to meet these con-

tributions, which responsibility was not met by the last Legislature for the existing obligations.

Eleemosynary Institutions

While the State has taken the greatest steps in a building program at our eleemosynary institutions during the past four years, we have as yet hardly come up to the current demand upon us. Even when the present building program is completed, unless it is continued for the ensuing two years, several hundred unfortunate insane people will naturally accumulate and have to be confined in jails. We must, therefore, keep up with the expansion necessary to meet the increase in numbers in our growing state.

The most pitiful and appealing sight in the world is presented by a simple visit to the State Home for the Feeble Minded right here in Austin. I urge all of you to immediately visit this institution, to talk with its superintendent; and when you learn, as I did, that 90% of these unfortunates are permanently hopeless and that there are hundreds now knocking at the door for admission, you will agree with me that the capacity of this institution ought to be doubled at once. It is not only the humane thing to do; it would be good business.

The State Board of Control in its budget recommendations has already cut suggested appropriations for our eleemosynary institutions to the very limit. I approve its recommendations as to the general appropriations but, in my opinion, they have been entirely too modest in asking for the small building program contained in their report. Just as surely as this Legislature fails to provide a really sufficient building program for the next biennium, then the next Legislature will be faced with the indefensible conditions of the past—Jails Overcrowded with Unfortunate Insane.

For years the State Fire Marshal has condemned a number of buildings at our eleemosynary institutions as fire traps. The Board of Control calls attention to this condition in their report. The facts and figures are available to you. It is nothing short of criminal for us to confine these unfortunate people in these unsafe structures. One tragic fire and the loss of life inevitably attendant upon it (as has happened in other states) will bring down upon us all the just condemnation of the people.

They don't want false economy, the kind that skimps and saves at the possible cost of human lives.

Texas has no home or place for the incarceration of delinquent negro girls. This condition has been forcefully called to my attention by the district judges composing the Juvenile Board of Bexar County. We should provide an adequate building at the State Institution in Gainesville at once to take care of these unfortunate negro girls.

Again, Texas has no place for feeble minded colored people or for colored epileptics. There are hundreds, perhaps, thousands, of them throughout Texas. There is no place for them and their people have no facilities to take care of them. This neglect is unpardonable, and I recommend immediate appropriations to provide adequate buildings and facilities for delinquent colored girls, and feeble minded colored people and colored epileptics.

Education

When I took the oath of office as Governor, the per capita for school children had been fixed by the State Board of Education at \$16.50. This obligation was delinquent. The deficit was paid off, however, the first year; and with the passage of additional revenue measures and the allocation of additional revenues to the school fund the per capita was raised to \$17.50, then to \$19.00 and finally to \$22.00 for each of the past two years, the highest it has ever been in the history of the State. In addition to this, the appropriation for rural aid has been almost doubled.

This raising of the per capita apportionment by resolution of the State Board of Education has brought to the fore a serious legal problem as well as a most important principle of government. The revenues from which the per capita apportionment is paid is made up of certain revenues specifically allocated to the fund by law, supplemented by revenues from the ad valorem school tax on property. The ad valorem tax is authorized by Article 7, Section 3, of the Constitution, which provides that one-fourth of the revenue derived from occupation and poll taxes shall be set apart annually for the benefit of the public free schools; "and, in addition thereto, there shall be levied and collected an annual ad valorem state tax of such an amount not to exceed thirty-five cents on the One Hundred Dol-

lar (\$100.00) valuation, as, with the available school fund arising from all other sources, will be sufficient to maintain and support the public schools of this state for a period of not less than six months in each year, and it shall be the duty of the State Board of Education to set aside a sufficient amount out of the said tax to provide free textbooks for the use of children attending the public free schools of this State."

Article 7042, of the Revised Statutes, provides that each tax assessor in the State shall make a statement to the Comptroller on or before July 15 of each year showing as nearly as can be ascertained the total amount of property in each county subject to taxation.

Article 7043, of the Revised Statutes, provides that within five days after the Comptroller has received certified statements from the tax assessors, the Automatic Tax Board (composed of the Governor, Comptroller and the State Treasurer) shall meet for the purpose of calculating the ad valorem rate of levy to be collected for the State and public free school purposes. It further provides methods by which the Board shall calculate the tax. This article authorized the Board to take into consideration the revenues which will be derived from all other sources and to fix an ad valorem tax rate "that will yield and produce for such fiscal year \$17.50 per capita for all of the children within the scholastic age as shown by said scholastic census."

Article 2665, of the Revised Statutes, provides that the State Board of Education shall "on or before the first day of August in each year," based upon an estimate theretofore furnished said Board by the Comptroller, "make an apportionment for the ensuing scholastic year of the Available School Fund."

Clearly these articles when construed together contemplate that the Automatic Tax Board shall meet first and determine the rate of the ad valorem tax; and shall then certify to the Board of Education the amount it is estimated will be available from all sources, including ad valorem, at whatever rate the Tax Board has fixed. The duty of the Board of Education then would be purely ministerial—the amount of the per capita being determined by simply dividing the estimated revenues by the number of scholastics and then certifying the amount to the various school dis-

tricts. In the past, however, the State Board of Education has not waited on the Automatic Tax Board.

The difficulty arises because heretofore the Legislature has from time to time increased the amount of per capita apportionment by successive enactments. For years prior to 1935 it took the maximum ad valorem school tax of 35¢ plus all other revenues to pay the amount stipulated by the Legislature. When additional revenues became available during and after 1935 by virtue of the passage of new tax measures, sufficient funds accrued to not only retire the deficit but to pay more than \$17.50—\$19.00 for one year, and \$22.00 for the past and present year.

Always up to that time the actions of the Automatic Tax Board and of the State Board of Education in fixing the tax rate and certifying the apportionment were purely ministerial and automatic. However, with the advent of increased revenues sufficient to pay more than the statutory \$17.50, there are those who insist that the State Board of Education has a right to meet prior to the Automatic Tax Board and fix the amount which, in their judgment, will be necessary to maintain and support the public schools for a period of not less than six months in each year; and, they contend, that it then becomes the duty of the Automatic Tax Board to levy the maximum tax of 35¢ on the one hundred dollars, even though when that is done it exceeds the statutory amount of \$17.50.

While the Constitution declares that sufficient taxes shall be levied to maintain and support the public schools for at least six months each year, it is silent as to where the duty reposes. Clearly this is a legislative function; especially since it involves the authorization and levying of taxes which is the constitutional prerogative of the Legislature. There is no yardstick in the Constitution as to economy, methods, or otherwise, by which the State Board of Education or the Automatic Tax Board could determine what amount is necessary to operate the schools for at least six months.

In my opinion, a request for a higher per capita than that fixed by statute is nothing more or less than a request for an appropriation. Appropriations must be made by the Legislature only. If any increase is to

be made it should be made by the Legislature. I therefore recommend to you that this statute be amended so as to clearly provide the amount which the Legislature desires to give to the schools as per capita aid; then if any surplus remains over at the end of the fiscal year, this surplus can be taken into consideration by the Legislature in determining whether it will increase that per capita. It is certainly not a sound principle of government to permit either the State Board of Education or the Automatic Tax Board to legislate by indirectly making appropriations and levying taxes.

The Automatic Tax Board, composed of the Governor, State Comptroller and State Treasurer, have passed an official resolution asking that this be called to the attention of the Legislature. They join with me in recommending that the per

capita be fixed by the Legislature rather than left to the discretion of either the Board of Education or the Automatic Tax Board.

Textbooks

In my opinion the cost of free textbooks is entirely too high to the taxpayers. Again, the Constitution and the law are too liberal with reference to powers of the Board of Education, the Constitutional provision simply being:

"It shall be the duty of the Board of Education to set aside a sufficient amount out of the said tax (ad valorem) to provide free textbooks for the use of the children attending the public free schools of this State."

Following is a table showing the number of scholastics, or pupils, the number of textbooks purchased, the net total cost by years, and the net cost per student, or scholastic:

Session	Number of Scholastics	Number of Textbooks Purchased	Net Payments to Publishers	Net Payments Per Scholastic
1931-1932	1,567,704	2,959,910	\$1,324,522.33	\$.845
1932-1933	1,565,924	2,758,928	1,184,458.14	.756
1933-1934	1,575,652	2,362,998	1,065,545.87	.676
1934-1935	1,561,000	3,998,922	1,798,831.89	1.152
1935-1936	1,558,855	4,116,965	2,381,207.64	1.528
1936-1937	1,562,867	5,503,921	2,407,559.23	1.540
1937-1938	1,566,544	3,222,605	1,743,839.27	1.113

It will be observed that beginning with the years 1934-1935 the cost of books has steadily increased in tremendous total sums as well as the cost per student. It jumped from a million dollars in 1933-1934 to \$1,798,000 in 1934-1935; and to \$2,381,207 in 1935-1936; and to \$2,407,559 in 1936-1937. In other words, the cost jumped from an average of 67¢ per student in 1933-1934 to \$1.54 in 1936-1937. The cost was more than doubled in that period of time.

In addition to this, at my request the Secretary of the State Board of Education has furnished me with an estimated cost of books already contracted for the years 1939-1940—a total of \$2,487,235.

It seems to me we should have accumulated a large stock of books during the past seven years and it ought not to be necessary for us to spend so much on school books in the future.

We have heard a lot of talk about economy, and here's a chance to save over a million dollars a year by placing a limitation on the amount the State Board of Education can spend for school books. It is in keeping with good government for the Legislature to authorize the total amount to be expended, rather than delegate this arbitrary power to the Board of Education or any other agency. Bear in mind that the money for these textbooks comes from ad valorem taxes.

We have slightly more than a million and a half school children, or scholastics, in Texas. It occurs to me that 75¢ or \$1.00 per scholastic should be sufficient. I therefore recommend that some such limitation be put on the cost of free textbooks. Later, should it develop that more money is needed, public policy dictates that the Legislature, not the Board of Education, determine by appropriation the amount to be spent.

Education for the Colored

The Constitution of Texas requires that separate schools shall be provided for the white and colored children, but requires equally as emphatically that "impartial provision shall be made for both." Impartial provision has not been made in many instances; but it is particularly true that the State has wholly failed to provide educational opportunities for negro students unable to pursue the courses of their choice in State supported institutions of higher learning. The State offers no facilities whatever to negroes for training in the professions or skilled trades. The Prairie View State Normal and Industrial College, in which the State probably receives the most value for each dollar spent, does not provide graduate work of any description and is unable to give training either in the professions or skilled trades. Negro students wishing this training must pursue their studies in out-of-State institutions. Colored teachers required to do "in-service preparatory training" must likewise attend out-of-State institutions. Even the teachers of our various negro colleges, including Prairie View, must be trained in out-of-State institutions, thus denying most colored Texans the opportunity to render this service to the State themselves.

The Texas Inter-racial Commission, composed of outstanding men and women of both races, together with other civic organizations in this State have sponsored a proposal to extend State aid to Texas negro students who desire to enter professions or take post graduate work in recognized educational institutions out of the State. Similar provisions have already been made in a number of other Southern States, including Oklahoma, West Virginia, Missouri, Virginia, Maryland and Tennessee. The justice and merit of such a bill has been recognized and endorsed by a number of our leading newspapers, including the Houston Post, the Wichita Daily Times, the Waxahachie Daily Light, the Dallas Journal, the Dallas Dispatch, the Dallas Times-Herald and the Fort Worth Star-Telegram. Such a bill likewise received the endorsement of the late Dr. H. Y. Benedict, President of The University of Texas, and many other progressive leaders both in the field of business and education.

In addition to the fact that the State owes this obligation to its colored citizens I direct your attention to the fact that Texas negroes who go to out-of-State institutions at their own expense are severely penalized by many factors, such as transportation, high living expenses in other States and the disadvantage of being away from home subject to Texas influences, etc.

Under the Constitution and in a spirit of fair play Texas owes its neglected negro citizens the duty of either establishing these facilities in a State institution here at home or by the passage of a reasonable State aid bill to help deserving negro boys and girls. The latter proposal is much more economical and would probably prove more satisfactory. It will not require the outlay of any tremendous sum; and, of course, appropriate safeguards will be incorporated in the bill to properly protect the interests of the taxpayers.

I therefore recommend and urge the Legislature to pass a bill similar to the one now operating in Oklahoma, making a proper and sufficient appropriation for this worthy purpose.

State Aid for Public Library Service

Although Texas shows up creditably in financial support of the common school system and may take pride in its institutions of higher learning, it is far behind in adult education. This is particularly true in the rural sections where no library facilities whatever are available. Texas ranks thirty-fourth among the States in the literacy tables. This State is thirty-ninth among all the States in support of public libraries. Three million, seven hundred and eighty-eight of our citizens are entirely without book borrowing facilities. As pointed out heretofore, Texas has been spending a lot of money on books to teach its boys and girls to read, but spends very little to provide them with worth while books after they learn to read.

I trust that when the State's finances will permit it, Texas will embark upon a program of State aid to libraries. It is quite possible that the aid of the Federal Government can be secured in this respect, and I invite your thoughtful consideration of this problem.

Abolition of Governmental Departments

For a long time there has been a demand for the abolition or consolidation of State departments and bureau. I made specific recommendations to the Forty-fifth Legislature urging, among other things, consolidation of the Agriculture Department with the A. and M. College at College Station. I still feel the same way about it but that Legislature in its wisdom saw fit to continue the present set-up.

I now desire to make another recommendation, one which I believe can be effected without impairment of governmental efficiency and which will save money to the taxpayers.

Under the Constitution and laws of this State the Comptroller of Public Accounts is supposed to be the real auditor for all departments of government. He is charged with the duty of auditing the accounts and checking the records of all other departments. The Attorney General likewise is charged with certain duties in this respect.

The Forty-first Legislature, however, in 1929, provided for the appointment of a State Auditor and Efficiency Expert with certain assistants. The appropriation has now grown to \$75,000.00 a year. Proposals are now being made for an enlarged State Auditor's Department, the Auditor to be appointed by committees of the Legislature. While it is concluded that some fine service has been rendered by auditors in the past, yet the charge has been freely made that the Auditor, being an appointee of the Governor, has lost his usefulness; and it is hoped that by changing the appointive power this objection will be removed. I do not think so. I think it will be subject to the charge of being a political office more than ever before.

But that is neither here nor there. The Comptroller can easily audit, and does audit other departments of the State at the present time. There is no occasion for an additional auditor other than possibly one with a very few assistants to check the Comptroller, if that be desirable.

I recommend that the office of State Auditor and Efficiency Expert be abolished in the interest of efficiency and economy.

State Land Board

The increasing value and importance of our state lands has become

more and more apparent the past few years. It was forcefully emphasized in the recent campaign for Commissioner of the General Land Office.

Practically everyone, including the new Land Commissioner, is committed to the proposition that these matters are too important, the amount involved too great, for the responsibility to be borne by any one man.

The important thing, of course, is that the Land Commissioner must be a man of unquestioned integrity and ability. Any board established by the Legislature must largely depend and rely upon him.

There is no occasion, however, for the creation of any new board carrying with it new employees. It seems to me that the matter could be handled very simply by requiring approval of the State Board of Mineral Development (which is composed of the Governor, the Chairman of the Railroad Commission and the Land Commissioner) to all leases made by the Land Commissioner. The Attorney General would also make a splendid member of such a board since, from the very beginning, he has been regarded as the people's representative.

I caution you to proceed carefully in the enactment of any complicated land law legislation. Our statutes on the subject are elaborate enough and have been construed by the courts. Oftentimes when needed reforms are sought, such as the one now desired by the people requiring divided responsibility in land leasing, there are those who would take advantage of the situation and seek to hamstring the State.

I think this new legislation should by all means authorize the sale of leases at public auction as well as by sealed bid. The experience of the University of Texas in auction sales of Texas lands has conclusively demonstrated that competition is keener and far better prices are obtained through this method of sale.

Civil Service

One of the greatest handicaps to modern government is the constant drain and demand made upon all our public officials by requests and recommendations for employment. I have personally experienced it as Governor. I have talked with other State officials and heads of departments. I have had repeated complaints from members of the Legislature who say that their time is

taken up by requests for endorsements.

From the moment a governor, or other State official, is nominated, until after all his appointments have been made, 90% of his time is taken up in interviewing people seeking employment or desiring to endorse others for employment. These applicants are not to be condemned. It is the natural thing to do under our system of government. Nevertheless, public officials are compelled by political necessities and the requirements of common courtesy to interview applicants, sometimes into the late hours of the night. As a result these public officials are unable to attend to pressing problems of government and oftentimes find it impossible to even discuss these problems with members of the Legislature.

The official involved has no means of checking abilities or qualifications of the applicants. Every official or legislator with whom I have discussed the matter agree with me that something ought to be done about it.

There is one answer, and one answer only; Some form of civil service for State employment should be required.

Applicants for employment should first go to a central agency within the department and the applicant should be subjected to examination to determine qualifications, character, etc. This would relieve the public officials involved and, in my opinion, result in securing more efficient help in the departments of State government. I, therefore, recommend early passage of legislation requiring civil service in all departments of the State government.

Council of State Governments

Texas is one of the few remaining states which is not officially a member of the Council of State Governments, that joint governmental agency serving all of the States. The Council of State Governments is the secretariat for the Governor's Conference, the National Association of Attorney-Generals, and the National Association of Secretaries of State, and it acts as a clearing house and research center for legislation, legislative reference bureaus, and for the above national organizations of public officials.

It is the medium through which many federal-state and interstate problems have been resolved and is a forum for the consideration of the in-

creasing number of problems which overlap state boundaries: questions of water supply, highway safety, interstate truck regulations, conflicting tax regulations, interstate trade barriers, liquor control, relief, social security and transiency. Many of these matters have been the subjects of conferences in which representatives of the State of Texas, designated by me, have taken part; and interstate actions resulting therefrom have been, and I am certain will continue to be, very beneficial to this State.

In order that Texas may take her rightful place as an authorized member of the Council of State Governments, and in order that we may continue to benefit from the many services available through this organization, I urge that you give careful consideration to a bill which will be introduced for the purpose of establishing the Texas Commission on Interstate Cooperation, a type of commission now already existing in the great majority of our states. I further recommend that Texas join with her sister states in supporting this, our joint endeavor, and that a small annual appropriation of \$4,500.00 be made to the Council of State Governments as our part in the support of this agency.

Workmen's Compensation Law

The present workmen's compensation law was passed in 1917. It has seldom been amended and then only in minor details.

It was designed to protect both the working man and the employer. To a great degree it has dismally and shamefully failed in both respects.

The fault is not with the Industrial Accident Board. It is manned with a personnel of only twenty-three employees. In spite of this inadequate force it passes upon thousands of cases each year. The records show that awards of the Board to injured claimants amount to more than the same claimants can secure in court.

The whole trouble is with the law. There is no finality whatever to the findings of the board; its orders are not even given the prima facie verity accorded to those of any other State Commission. Because of defects in the law the Commission has no standing comparable to that accorded similar boards in other states.

The defect in the law seemingly gives an injured worker or his family only the right to bring a lawsuit even after the case is made before the

Board. In fact, the law invites delay and litigation by providing that attorneys' fees shall be 15% and 10% before the Board but 33 $\frac{1}{3}$ % if appealed to the courts. The records show that cases appealed to the courts from the ruling of the Board have resulted in 10% less recovery for the workers than before the Board, and at a tremendously increased cost to both the employee and to the insurance company in attorneys' fees.

The Industrial Accident Board has no power to pass upon the solvency or ability of an insurance concern do business in Texas. Even if the Board did have this power, under the present law, it is entirely too easy for irresponsible concerns to operate in Texas. After injury or death employees and employers alike have waked up to the fact that though they thought they were adequately covered, the exact opposite was true. There are thousands of crippled men throughout the State who have never received a d e q u a t e compensation; some of them none at all. There are thousands of widows or orphans throughout the State whose husbands or fathers have been killed in line of duty and who have never received benefits intended when this law was passed—benefits to which they are entitled by reason of regular payments of premiums by employers acting in good faith.

At present, about the only certain guarantee an injured employee has is the right to bring a lawsuit. If he is able to stand off starvation and stave off a settlement to avoid long drawn out delays after the case is in litigation, he finds, too often, that his judgment is given a concern in receivership or bankruptcy. The condition, permitted by the law, is little short of criminal.

During the past summer I caused a survey and study to be made of this problem by Dr. Karl E. Ashburn, professor of government at Texas Technological College. For this purpose he was appointed an Assistant State Auditor and has made an official report to me, which has been printed and is available to you. I recommend that you carefully study this report and then enact appropriate legislation.

It would be well for us to authorize a system of State compensation insurance similar to that prevailing in other states where it has been successful. The experience of the Colorado River Authority here at home,

and of our own State Highway Department, has been most enlightening. It shows what can be done.

When the Colorado River Authority investigated private compensation insurance rates they found that the premiums on their payroll alone would have been over \$300,000.00. Instead the Authority set up its own system; and at a cost of less than \$100,000.00 they have paid compensation claims promptly, furnished hospital facilities, safety engineers and paid a small percentage of the general office expense. They actually gave the workers on this project better protection, quicker results and saved more than \$200,000.00 that they would have paid in premiums alone.

These defects in our workmen's compensation law constitute an indictment of the stability of government to secure citizens their rights. Maimed and injured men and the families of workmen who have lost their lives in labor cry out to us for justice. This thing has gone along untouched too long. It must be rectified.

Clemency and Parole

In 1936 the people adopted an amendment to the Constitution taking the unrestrained power of clemency out of the hands of the Governor and requiring that before the Governor can exercise this power it must be recommended by a majority of a board of pardon advisers composed of three members. This constitutional amendment is self-enacting to a degree but contemplates further legislation. The Forty-fifth Legislature passed an act which I vetoed, my veto message appearing at pp. 1342-1345 of the House Journal and pp 715-718 of the Senate Journal. Unquestionably bills will be introduced on this subject, and I caution the Legislature to examine them carefully, in the light of certain objections and principles pointed out in my veto message.

The Board has operated merely under an appropriation by the Legislature which provides that one member of the Board shall reside in Huntsville. This has proved very satisfactory on the whole. I understand an effort will be renewed to remove the entire board to Huntsville. I do not believe this will prove satisfactory. It has been my experience that the interests of the convicts as well as the general public will best be served by having the Board and its records

available here in the Capitol, not only for the benefit of the Governor but members of the Legislature and others who desire to present cases for consideration.

There are those who criticize certain members of the Pardon Board, maintaining that they are "too hard" on convicts. I believe in a liberal clemency policy and yet I must caution this Legislature lest we swing too far the other way.

Most of this criticism is brought on by the fact that the prison population has increased in the past four years from approximately 5,800 to 7,000; and clemencies recommended have not been so liberal as those granted under some preceding administrations.

This increase in prison population is attributable to four factors: viz, first, an increase in the number of convicts received at the penitentiary; second, refusal to recommend or grant clemency to convicts suffering from venereal or other communicable diseases; third, while thousands of convicts have been released on clemencies during this administration we have not been quite so "liberal" in releasing men as has been done upon certain occasions in the past; fourth, a change in the method of figuring commutation and overtime under the present law as construed by the Court of Criminal Appeals.

The increase in the number of convicts received at the prison is shown by a comparison of new inmates received during the months of September and October, 1938, as against 1937. In September, 1938, 169 new convicts were received in the State Prison; in September, 1937, only 140 were received. In October, 1938, 304 new convicts were received as against 210 new convicts for the same month in 1937.

Comparative records for the same month show, on the other hand, that since the constitutional Board of Pardons and Paroles completed its records and systems, more convicts have been recommended and granted clemency. In September, 1938, 105 were granted conditional pardons as against 54 for September, 1937. In October, 1938, 88 convicts were given conditional pardons as against 63 for the same month last year. The Board recommended a few others which were denied by the Governor.

These recommendations do not show numerous other duties performed by the Board in connection with death

penalty cases, restoration of citizenship and hunting rights; remission of fines and forfeitures.

Let us give credit where credit is due. Irrespective of whether we agree with individual members of the Board in particular cases, the Board of Pardons and Paroles has really made fine progress. They are now constitutional officers, charged with a duty just as solemn and binding upon their conscience as any taken by members of the Legislature or by the Governor.

When the Board "took over," case records were incomplete; in half the cases the Board had no record at all. Necessarily this slowed down their recommendations until the new amendment was systematized. Now the files are full and complete; and information as to why a clemency was refused or recommended is readily available.

Immediately upon the arrival of a convict at the Prison System his record is forwarded to the Board. Trial officers are promptly contacted and statements of facts in the case filed while it is fresh. This eliminates the old problem of local officers going out of office by resignation or completion of their terms, and new officers taking their places who are unfamiliar with the facts and not in position to give the Board a correct statement.

Probably the most far reaching reform achieved by the State Prison Board has been the installation of a classification bureau in the State Penitentiary. Each convict is studied and analyzed. His own version of the case, and of his life, is secured. His past activities are checked by letters written to former employers and associates. He is then classified as to his probable rehabilitation; that is, whether he is a good, fair, or poor risk.

In addition to this, at my direction the Board requires a certificate as to whether the convict is suffering from a venereal or contagious disease. Prior to this time, even during the first year of my administration, when the Governor had the absolute power of clemency, no attention was paid to the physical condition of the convict to whom clemency was granted. We can appreciate the importance of this changed policy when we find that 45% of the convicts received at the State Penitentiary are suffering from

venereal diseases; 30% from syphilis, 15% from gonorrhea.

During the past year, out of 2,900 convicts received at the Penitentiary 1,300 were suffering from venereal diseases. Eight hundred and fifty of the 1,300 were afflicted with syphilis. It takes over a year of treatment in the State Penitentiary to render this disease non-communicable. Does any one advocate as a general policy the release of convicts suffering from communicable diseases upon a public already terrified by disclosures of health authorities as to the increasing prevalence and ravages of this most dread disease!

A large percentage of the increase in prison population is, therefore, due to the fact that immediately upon promulgation (at my instance) of the rule requiring, except in special cases, a venereal disease "clearance" before discharge upon clemency, at least 1,500 convicts were taken temporarily out of clemency "circulation." For this action neither the Board nor the Governor has any apology to make. Indeed, I regard it as a constructive achievement.

Naturally, this slowed down clemency, or discharge upon parole (which is not a matter of right, but lodged in the discretion of the Board and of the Governor); but with the lapse of a year's time the percentage of recommendations by the Board has materially increased.

Aside from these increases attributable to increase in population and a change in the loose pardon policies of some former administrations, another increase is attributable to the law itself. For many years the Prison Board has been upheld by the Court of Criminal Appeals and the Attorney General's Department. The Prison Board has only this year followed the correct interpretation of the law as handed down by the Court of Criminal Appeals.

It may be that the Legislature will deem it advisable to increase the allowance for overtime and commutation, but it certainly should be by authority of law, not by ignoring it. Before making any change in the statutory law you should carefully ascertain the amount of overtime and commutation permissible under the present law; and determine where the change may lead us.

You should consider, for instance, that under the present law, as con-

strued by the Court of Criminal Appeals, a convict is entitled to commutation for good behavior of two days per month for the first year, or 24 days the first year; to three days per month, or 36 days, for the second year; to four days per month, or 48 days, per year for the third year, etc.; and that commutation is allowed increasing one day per month, or twelve days per year, for each year up to and including the ninth year; for the tenth, and all subsequent, years, the present law allows commutation of fifteen days per month, or 180 days, per year.

The difficulty with commutation before the decision of the Court of Criminal Appeals arose because the then Prison Authorities instead of waiting until the end of the year to credit the convict at the end of the twelve months with twelve months and 24 days, began at the expiration of eleven months and 6 days crediting him with one year. Then, at the end of the next shortened period, before the time was served, he was allowed the entire credit for a year's service although he served a gradually lessened period.

In addition to this, under the present law, the Prison Board is allowed to give the convict credit for overtime—a credit of one extra hour for each hour of overtime put in. In allowing this overtime the prison authorities, where a man had built up 300 hours of time, gave him a credit of thirty days, basing it on a ten-hour day. The Court of Criminal Appeals correctly held that when a man is sentenced it is for a calendar period of time. In other words, he must not only spend working hours in the penitentiary, but the remaining fourteen hours as well.

In addition to this, in many instances the Prison Board allowed overtime for skilled trades simply because a convict was engaged in that character of work and not because he actually put in the time.

The best method of determining the vices and virtues in the existing law and the construction put upon it by the prison authorities until the decision of the Court of Criminal Appeals, is to take a specific case. A few years ago a man named Stone, together with one Bob Silver, assassinated a payroll clerk in a hold-up at Fort Worth. Silver received the death penalty, which was later com-

mutated by Governor Moody; and Stone received a sentence of from 5-99 years in the penitentiary. Later Governor Miriam A. Ferguson commuted Stone's 99-year sentence to 15. After the sentence was cut to 15 years, it was discovered that under the system applied by the then prison authorities (which now has proved to be erroneous by the opinion of the Court of Criminal Appeals), Stone had been discharged after serving approximately 6½ years of straight time. In other words, he was given commutation and overtime (because he was a bookkeeper) whereas if the law, as construed by the Court of Criminal Appeals, had been followed he would have had to serve at least ten years actual time under the present law to discharge his sentence which had been reduced from 99 to 15 years.

Now in making any proposed drastic change in policy you should bear such cases in mind. Let us assume, for instance, the case of a moral pervert committing a brutal attack upon a child and given a long term of years in the penitentiary. Such men generally remain a menace to society for many years. Witness the sex crimes committed in a number of other States and one or two recent ones in this State. When a jury returns a verdict of 50 years or 99 years, they think he is going to serve that long. Yet, under even the present indeterminate sentence law, the court sentences not for 50 years or 99 years, but for "from 5 to 50 years," or "5 to 99 years" as the case may be.

Now if the present law should be changed to the extent proposed by some, such men might be automatically discharged long before serving the actual time assessed by the jury. Might it not be better to leave worthy cases in the discretion of the Board and the Governor where their clemencies could be promptly revoked, rather than permit discharge too long before the expiration of the term adjudged by the jury. This is a serious matter and we must not let passing personalities influence our decision as to policy. Discretion should always be lodged in the Board of Pardons and Paroles and the Governor as to the granting of paroles; otherwise there would be no occasion for the Board. I urge the Legislature to think long and well upon these

problems before making any drastic change.

I cannot praise too warmly the services of the voluntary parole boards throughout the State. Without a penny of cost other than postage, hundreds of outstanding men and women, in more than 150 counties in the State, have acted as advisors to men released from the penitentiary, helped them secure employment and have been of invaluable assistance to the Board and to the Governor in determining whether the paroled convict was measuring up to the confidence manifested in him.

During almost four years of my service as Governor, thousands of convicts have been released upon conditional clemency. Less than 10% have had to be returned for violation of the conditions imposed upon them, and I am happy to report that only one man has attempted the commission of a really serious crime. The strange thing about this case was that it was from a most unexpected type—a forger, who was released on a thirty-day furlough, who had no previous record of crime, and who attempted to hold up a bank. His attempt failed. This remarkable record is a testimonial to the effectiveness of a humane, friendly and cooperative attitude toward men released from the penitentiary on clemency.

These voluntary parole boards should be given official status. The Governor should be authorized to issue to them commissions under the Seal of the State. Provision should be made in the more crowded and populous centers of the State for a paid secretary to relieve the burdens now imposed upon the public spirited men and women composing the voluntary parole boards.

The Prison System

Recent press reports have contained accounts of criticisms of the operation of the State Prison System; and further state that an investigation will be proposed during the Forty-sixth Legislature. I am authorized by Hon. Joseph Wearden, Chairman of the State Prison Board, to state that the Board, and the prison management, will welcome a fair and unprejudiced investigation.

Mr. Wearden has been a member of the Prison Board for twelve years, since its creation in 1926. He has served as Chairman during the past

two years and, in my opinion, is the best informed man on the prison problem in Texas. Of course, there will always be those who, without similar experience, or indeed any at all, can tell us, especially in the newspapers, exactly what is wrong.

I suggest that in any investigation unprejudiced and unbiased members of the Legislature should constitute the committee. It has long been a legislative custom to appoint the sponsors of investigating resolutions, even those which make accusations, as members of the committee. Without intending any criticism of this policy, it seems to me that it would be much fairer for the sponsors of such resolutions to appear as prosecutors, just as the district attorney represents the State, and to have on the committee men whose minds are open. This is a mere suggestion, however, and will, of course, be controlled by the Presiding Officer of whichever branch of the Legislature institutes the investigation.

I urge that at the very outset Mr. Wearden, as Chairman, should be called; and I am sure he will make a full and frank statement of problems and conditions which will probably be of inestimable benefit to all.

The State Prison Board has accomplished much during the past few years. For the first time in history a segregation program has been instituted; convicts are classified upon entry to the prison and segregated accordingly. Every effort is made to prevent the housing of young prisoners or others capable of rehabilitation, with older and hardened criminals.

Much progress has been made with reference to sanitation and hospitalization. A building program has been carried on and many modern brick buildings completed with convict labor at an average cost of \$40,000.00 per building, which would have cost with outside labor from \$125,000.00 to \$150,000.00.

One of the criticisms recently voiced in the press deals with the fact that the Prison System has not operated at a profit in the last year, or so. It is said this should be done with approximately 7,000 men constituting "free labor." As a matter of fact, these 7,000 inmates have increased rather than decreased the cost of operation. As pointed out in that portion of my message dealing

with the clemency and parole problem, the prison population has increased from an average of 5,800 to 7,000, due to the increasing number of new convicts received, the less liberal exercise of the power of clemency, the requirement of a venereal clearance before clemency is granted, and the change in the rules governing commutation and overtime as required by the opinion of the Court of Criminal Appeals.

As stated by the Chairman of the Prison Board, "deficits in prison operation are not an unusual thing. The records will show that it was only on rare occasions when prison population was low and the prices of farm products were abnormally high that the Prison System ever made a profit. Climatic conditions, too, will always affect the showing as long as our major revenue producing activity is farming, just as other farmers are affected." Records show that the average net loss for the nine years immediately preceding 1938 was \$860,-175.05 per year—and this with a smaller prison population.

According to Mr. Wearden, the average cash operating cost of the penitentiary last year per man was \$252.39, compared with a preceding 10-year average of \$285.05 per man; and compared with the average cost for the year just prior to creation of the Texas Prison Board (in 1926) of \$438.13 per man per year.

As pointed out by Mr. Wearden, the principal work done in the prison is farming. Even private farming can hardly be said to have been successful the past few years; but prison farming operations might perhaps be more successful if more farmers went to the penitentiary. The converse is true. Most of the inmates of the penitentiary are from cities and towns. Of 6,400 inmates on December 31, 1937, only 551, or about 8%, were farmers.

In addition, these inmates are not able bodied men. As heretofore pointed out, of the convicts received last year 45% were suffering from venereal diseases. Of 2,968 new inmates received last year, only 1,891 were classified as suitable for work; 596 for restricted labor; and 481 for light duty. According to the report of the medical supervisor 75% of the women, and 55% of the men, showing evidence of syphilis, were unaware of the presence of the disease.

After examination of all new con-

victs, all those cases are hospitalized and given treatment. In the case of syphilis, this treatment lasts from 14 to 18 months. The cost of this treatment is increasing each year, as shown by the use of 26,945 intravenous injections in 1937 as compared to 17,895 the year previously; 17,825 bismuth injections in 1937 as compared to 13,500 in the year 1936. This was money wisely spent, yet it is typical of the many ways in which operating expenses of the State Prison System have been increased.

Again, as stated by Mr. Wearden, "Guard hire alone, at salaries fixed by the Legislature (not the Prison Board) runs to \$450,000 over the previous year due to the increase in the number of inmates. The rate of pay fixed for guards is not too high, but it is almost double what it was a few years ago."

The Prison System is under the direct management of the General Manager, who is appointed by the Prison Board. The Board lays down the policies which the General Manager follows. Everything purchased for the Prison System is purchased through the State Board of Control, which is, of course, independent of the Prison Board and the General Manager.

Every fiscal year transaction is audited and approved by the Prison Auditor, who is appointed by the Attorney General, Comptroller and State Treasurer, and is independent of the Prison Board and the General Manager. All money expended by the Prison Board is directly appropriated by the Legislature.

I have not attempted to discuss all aspects of the problem, but I think, upon the whole, the operation of the State Prison has been splendid. The reforms achieved, such as segregation, institution of schools teaching trades, etc., more than offset petty criticisms.

Public Health

In the past two years public health work has been placed upon a higher plane and has gone farther than ever before. Whereas formerly, the State Health Department only with the handling of birth and death certificates, it is now, with the aid of the Federal government, carrying on a far-reaching program essential to community happiness, training men for service in sanitary engineering so as to insure pure water supplies and healthful sewage systems. It now en-

gages in stream pollution service; in inspecting, correcting and approving tourist camps, oyster shucking plants, ice factories, state parks, swimming pools, pecan shelling factories, etc. Its activities in connection with enforcement of the food and drug law has increased more than 50% in two years. Without financial help of the Federal government and the increased State appropriation of two years ago, this could not have been done.

We should be proud of our laboratory bureau, which has performed increased services during the past two years. It is one of five such institutions in the United States licensed to manufacture and dispense biologics. The laboratory has made 164,496 diagnostic tests for the verification of suspected communicable diseases; 3,706 chemical tests of food, water, drugs and other samples; over 5,000 brains of animals examined for rabies; 4,000 milk samples; 18,124 water samples; 24,000 blood and spinal fluids examined.

The new work of this department in industrial hygiene for the improvement and conservation of the health of our industrial population, as well as the increased activities and study of tuberculosis and malaria control, drainage, maternal and child health, dental inspection (which has increased 1,000%) cannot be minimized and must not be forgotten.

But by far the most important division is that of control of venereal disease. Congress passed the LaFollette-Bulwinkle bill under which a part of this money was earmarked to the states on a matching basis. Local funds have had to be used for matching since the State did not make sufficient appropriation for venereal disease control.

I have heretofore pointed out to you the fact that 45% of those entering the State Penitentiary are suffering from venereal disease, 30% of them suffering from syphilis.

In addition to this, it is estimated that 600,000 Texans, 10% of our population, are now a potential syphilis treatment problem. Twelve per cent of the inmates of our mental hospitals are there as a direct result of syphilis; the majority of the still-births of Texas are due to this disease. Heart complications and many other preventable conditions are caused by this one disease. We can, we must continue an unceasing warfare upon it at its source.

In this matter which so vitally affects the health and happiness of the people, indeed the very existence of our citizenship, we must go forward. All of us want to economize, but it is false economy to ignore disease and causes of disease round about us. There is no security for any, even though statistics do disclose that the greater percentage of these dread diseases is among our underprivileged and unfortunate people. It spreads to all; and in any event is the responsibility of all. It will be false economy to cut down in public health appropriation. It will cost more in dollars and cents in the immediate future if this is done than any saving by reduced appropriations.

Department of Public Safety

Texas has the finest Department of Public Safety in the Union. In recent months it has received universal commendation and is said by authorities to be second only to the Federal Department of Justice.

All of us are particularly proud of the fine young men who compose the Highway Patrol, and of the intelligence department, with its experts who have been of invaluable assistance to local officers.

The department is headed by three outstanding citizens of Texas, serving at a sacrifice and practically without pay. Here in this department, if anywhere, politics have been cast aside and the merit system instituted. Examinations are held, the applicants carefully checked as to character and ability, with resultant public approval and efficient service. We do not as yet have enough of these fine young men to properly patrol our highways, but during the past year they have made splendid progress in cutting down highway accidents and carrying on a safety program. I trust that each member of this Legislature will conceive it to be his duty to see that the efficiency of this department shall not be disturbed.

Law Enforcements

One unit of the Department of Public Safety, the State Ranger force, was received by transfer from the Adjutant General's Department. In the act making this transfer and creating the Department of Public Safety, the constitutional duty imposed upon the Governor to "cause

the laws to be faithfully executed" was likewise placed upon the Commission. It is largely through the Ranger force, of some 30 men, that this law enforcement work has been carried on—efficiently and honestly.

The records are available as to work done in murder cases, cattle theft and bad situations cleaned up in various communities where life was hazardous to the law-abiding citizen. The most effective work done, however, for law enforcement has been in connection with driving out of business the professional big time gamblers operating in Texas. Since their political power has been broken they have been desperate; and every effort has been made and will be made to cripple the enforcement of laws against them.

I would remind you and my successor that the Governor of this State is sworn to uphold every provision of the Constitution, including that which requires him to "cause the laws to be faithfully executed." Notwithstanding there are a few who seriously proposed to "crimp" the Governor's power and prevent his discharge of his duty to enforce the laws under the thin veil of local law enforcement. There are none of us but would prefer that laws be enforced locally if all local officers would discharge that duty. But, as is well known, there are a few spots in Texas where this will not be done. As pointed out years ago by Governor Pat M. Neff, there is no such thing as local option on law enforcement. Every prosecution is in the name of the State; and if officers in some local communities are to be permitted to enforce some laws and to ignore others it may in the future, as it has in the past, create conditions where the lawless and corrupt element becomes a decisive political factor and controls the enforcement officers themselves.

Nearly fifty years ago Governor James Stephen Hogg said:

"... When laws are passed they should be enforced, for they are but the commands of the people to their officers. Idle and obnoxious ones should be repealed, but none of them can be disregarded except at the expense of official integrity. A people who would encourage and not condemn the crime of official delinquency have but to wait to glean oppression's harvest. A government that permits a law disobeyed, commits itself to a precedent that in time will be pleaded

in justification of anarchy . . . Let the world know that in Texas the

"Sovereign law, the State's collected will,

O'er thrones and globe elate
Sits empress—crowning good, re-
pressing ill."

Members of the Forty-sixth Legislature, for the next two years the prosperity, happiness and welfare of the people of Texas is imposed in your hands and that of the incoming Governor. The things you do here, however, will probably affect and determine the trend of affairs for years to come. I beg of you that you reflect long and prayerfully as sworn servants of the people before "turning Texas loose," before permitting her to return to the infamous conditions prevailing in some sections of the State a few years ago.

In the words of Governor Hogg: "Enforce the law!"

Criminal Law Changes

No discussion of the problems of inmates of the penitentiary, or the question of law enforcement, would be complete without reference to needed changes in our criminal laws.

More than ten years ago when the then general manager of our penitentiary system, one of the ablest we have ever had, was asked what was wrong with the prison system, he said that, among other things, is was due to two factors: first, the fact that automatic penitentiary sentences were imposed in certain characters of cases without references to the nature of the crime involved; and neither courts nor juries have any discretion other than to impose a penitentiary sentence; second, because of the varying penalties imposed by juries for the same character of cases and, oftentimes, as between defendants convicted of the identical offense.

This is largely true. In some respects our criminal laws are tragically foolish. For instance, it is a penitentiary offense to forge a check, regardless of the amount involved. Recently two youngsters were convicted of forging an indorsement on an oil royalty check for eight dollars. They were sent to the penitentiary; yet if they had stolen eight dollars in money, or eight dollars in property, they would have only been guilty of a misdemeanor and could have gotten off with fines or jail sentences.

Again, the suspended sentence law cannot be invoked where a defendant is convicted of more than one offense. Oftentimes a youngster gets on a spree and perhaps while drunk will forge several small checks. He will be indicted in each case and sent to the penitentiary for a minimum of two years in each case, generally running concurrently. Neither the court nor the jury has any discretion.

A bank officer, or employee, can embezzle thousands of dollars and get off with a suspended sentence; yet a hungry boy who inexcusably yields to temptation and commits a robbery, even though the proceeds may not be more than thirty cents must go to the penitentiary. He cannot receive a suspended sentence.

From time to time we have heard criticisms of the abuses of the severance law. It too often happens that defendants tried by separate juries are given utterly inconsistent penalties. The jury trying the second, or third, case is not entitled to know anything about what happened to the co-defendant. Time and again in each administration the Governor and the Board of Pardons are confronted, even as we are at this time, with cases where men have been tried by separate juries for the same robbery and one, or more, of the defendants given a life term in the penitentiary with another receiving the death penalty.

Justice and progress dictates that these defects be rectified. It seems to me that it would be much better if in practically all character of cases the penalty might range, as it generally does in Federal court, or in our State prohibiting driving while intoxicated, from a fine or jail sentence, or both, on up to a penitentiary sentence. Justice would be more evenly balanced if the State judges were permitted to determine the punishment rather than leave it to the untrained and, too often, uninformed verdicts of juries.

Conclusion

And now, my friends of the Forty-sixth Legislature, I leave in your hands and in the keeping of my successor these suggestions and recommendations. They are poorly phrased and inadequate, but they represent the best judgment of my heart and mind and the results of my experience in the public service.

Your task is not an easy one. Government is not so simple as it used to be. Quite frequently we hear the contrast between the low cost of government of 20 and 30 years ago and the high cost of government today. Often, too, people say we have too many laws. But the fact of the matter is that our growing population, our industrial development, our agricultural and other economic problems have rendered the task of government and law making far more difficult and necessarily more expensive. People today require, and expect, more of their government than ever before. Organized minorities will continue to make demands upon you, demands which must be weighed and carefully considered. Your service will require all of the talents, the tolerance, the temperance and thoughtful devotion to State and Country that can be mustered. I am sure that if these forces are called into play, we can continue this government successfully and democratically in the interests of the people.

Respectfully submitted,
JAMES V. ALLRED,
Governor of Texas.

At the conclusion of the address by the Governor, the Senate returned to the Senate Chamber.

In the Senate

The President called the Senate to order at 12:15 o'clock p. m.

Resolution Signed

The President signed in the presence of the Senate, after its caption had been read, the following resolution:

S. C. R. No. 1, Providing for temporary joint rules of the House and Senate.

Message from the Governor

The President laid before the Senate, and had read, the following message from the Governor:

Austin, Texas,
January 10, 1939.

To the Senate of the Forty-sixth Legislature:

I ask the advice, consent and confirmation of the Senate to the following appointments:

To be Members of the Board of Architectural Examiners:

Herbert Voelker, of Wichita Falls, Wichita County, to fill the unexpired term of Lester T. Flint, deceased. (Mr. Voelker was heretofore appointed to a two year term on the Architectural Board, and his appointment here is to fill the balance of the four year term of Lester T. Flint, deceased.)

Thomas D. Broad, of Dallas, Dallas County, to fill the unexpired two year term of Herbert Voelker, who has been appointed to fill the unexpired four year term of Lester T. Flint, deceased.

To be a Member of the Board of Barber Examiners:

L. E. Gray, of Ranger, Eastland County. (Reappointment; two year term beginning October 14, 1938.)

To be a Member of the State Commission for the Blind:

James A. Boddeker, of Galveston, Galveston County. (For term expiring March 4, 1939.)

To be Directors of the Brazos Reclamation and Conservation District:

R. A. Whatley, of Mineral Wells, Palo Pinto County, to succeed Henry Dunlavy, resigned.

Dr. A. C. Scott, Jr., of Temple, Bell County, to succeed John Lawrence, deceased.

To be Directors of the Central Colorado River Authority:

Arthur Young, of Burkett, Coleman County (reappointment).

George Pauley, of Valera, Coleman County (reappointment).

H. E. Evans, of Talpa, Coleman County (reappointment).

Leroy Stockard, of Santa Anna, Coleman County (reappointment).

H. S. Willey, of Novice, Coleman County (reappointment).

Dr. T. Richard Sealy, of Santa Anna, Coleman County (reappointment).

To be a Director of the Lower Colorado River Authority:

C. R. Pennington, of Abilene, Taylor County (reappointment to six year term).

To be Directors of the Upper Colorado River Authority:

C. L. Green, of Winters, Runnels County (to fill the unexpired term of T. D. Coupland, deceased; expiring January 1, 1941).

L. T. Youngblood, of Bronte, Coke County (reappointment; six year term beginning January 1, 1939).

J. Culberson Deal, of San Angelo, Tom Green County (reappointment; six year term beginning January 1, 1939).

R. M. Simmons, of Sweetwater, Nolan County (reappointment; six year term beginning January 1, 1939).

To be District Attorney of the Forty-ninth Judicial District:

Philip A. Kazen, of Laredo, Webb County (to succeed John A. Valls, resigned, December 1, 1938, for the remainder of term expiring December 31, 1938, and for two year term beginning January 1, 1939).

To be Members of the State Board of Education:

Ben G. Oneal, of Wichita Falls, Wichita County (to succeed Tom Garrard, of Tahoka; six year term).

Homer C. DeWolfe, of Austin, Travis County (to succeed Ghent Sanderford, of Austin; six year term).

M. T. Junker, of Dallas, Dallas County (to succeed R. S. Bowers, of Caldwell; six year term).

To be Fireman's Pension Commissioner:

R. W. Dykes, of El Paso, El Paso County (two year term, beginning December 17, 1937).

To be Directors of the Guadalupe-Blanco River Authority:

Joe P. Gibbs, of Seguin, Guadalupe County (to succeed Adolph Fenne, for the term beginning February 1, 1937, and ending February 1, 1943).

A. J. McKean, Jr., of Luling, Caldwell County (for the term ending February 1, 1943; succeeding L. H. Bridges, of Luling).

W. H. Smith, of Victoria, Victoria County (succeeding W. H. Crain, resigned; term expiring February 1, 1943).

A. W. Bourke, of Cuero, DeWitt County (for term expiring February 1, 1941; succeeding Newton W. Crain, resigned).

To be Members of the State Board of Health:

W. L. Baugh, of Lubbock, Lubbock County (to succeed S. J. Alexander, of Hearne, deceased; term expires June 15, 1943).

R. A. Thompson, of Dallas, Dallas County (to succeed J. M. Howe, of Houston, deceased; term expires in 1943).

To be Members of the Texas Historical Board:

J. J. Carl, of Liberty, Liberty County.

Mrs. J. L. Staton, of Waco, McLennan County.

To be a Member of the Industrial Accident Board:

T. B. Hill, of Austin, Travis County (to succeed A. M. Graves, deceased; term expires September 1, 1939. Mr. Hill is representative of employers of labor on the Board).

To be Judge of the Forty-ninth Judicial District of Texas:

John A. Valls, of Laredo, Webb County (to succeed Judge J. M. Mullally who resigned effective November 30, 1938; for term ending December 31, 1938, and also for the term beginning January 1, 1939).

To be Judge of the Fifty-ninth Judicial District of Texas:

J. T. Suggs, Jr., of Denison, Grayson County (to succeed Judge F. E. Wilcox; term expiring next general election).

To be Presiding Judge Administrative Judicial District No. 2 and Member of Texas Civil Judicial Council:

W. C. Davis, of Bryan, Brazos County (reappointment).

To be Members of the Texas Civil Judicial Council:

A. H. Britain, of Wichita County (reappointment).

R. L. Ball, of Bexar County (reappointment).

D. A. Simmons, of Harris County (to succeed J. H. Barwise, of Fort Worth).

To be a Member of the Library and Historical Commission:

L. W. Kemp, of Houston, Harris County (to succeed George E. Shelley, of Austin, for a six year term beginning September 19, 1938).

To be Chairman of the Texas Liquor Control Board:

E. W. Crouch, of McGregor, McLennan County (to succeed Pat Dougherty, of Austin, resigned; term expiring November 15, 1943; Mr. Crouch was appointed upon request of Senator W. R. Newton, deceased, who at that time represented the Thirteenth District in which Crouch resided).

To be Members of the Board of Directors, Nueces River Conservation and Reclamation District:

Claude V. Birkhead, of San Antonio, Bexar County (to succeed C. S. Fowler, deceased; term expires February 1, 1941).

Albert Steves, of San Antonio, Bexar County (to succeed J. A. Mil-

ler, of Rock Springs, resigned; term expires February 1, 1939).

O. N. Stevens, of Corpus Christi, Nueces County (to succeed Hal Yakey, of Agua Dulce, resigned; term expires February 1, 1943).

Luther De Vilbiss, of Pearsall, Frio County (to succeed Odem Walker, of Fowlerton, failed to qualify; term expires February 1, 1941).

To be Members of the Pink Boll Worm Commission:

L. F. Curl, of San Antonio, Bexar County (as the member recommended by Secretary of Agriculture H. A. Wallace, to represent the Federal Government, as provided by law).

Miller Harwood, of Taft, San Patricio County.

Mac Word, of Alice, Jim Wells County.

Julius H. Wright, of Robstown, Nueces County.

J. H. Howell, of Presidio, Presidio County. (Harwood, Word, Wright and Howell were each appointed as the Commission member from their respective infested area upon recommendation of the District Judge of each respective area, as provided by law.)

To be Members of Commission of Public Safety:

Albert Sidney Johnston, of Dallas, Dallas County (reappointment; two year term, beginning January 1, 1938).

W. H. Richardson, Jr., of Austin, Travis County (reappointment; six year term, beginning January 1, 1938).

To be Members of the Board of Directors of San Jacinto Conservation and Reclamation District:

O. Etheridge, of Conroe, Montgomery County.

Leo Paddock, of Willis, Montgomery County.

J. W. Green, of Richards, Grimes County.

Charles R. Scott, of Dacus, Montgomery County.

Walter Greenwood, of Plantersville, Grimes County.

K. W. Keeland, of New Waverly, Walker County.

To be Members of the Board of Directors of Texas Technological College:

Mark McGee, of Fort Worth, Tarrant County (to succeed Clifford Jones, resigned; term of six years beginning February 19, 1937, and ending February 19, 1943).

Lisle Steele, of Mexia, Limestone County (succeeding Dennis Zimmerman; for term of six years, expiring February 19, 1943).

To be a Member of the Texas Unemployment Compensation Commission:

Patrick D. Moreland, of Kaufman, Kaufman County (reappointment for term beginning November 21, 1938).

Respectfully submitted,
JAMES V. ALLRED,
Governor of Texas.

The message was referred to the Committee on Nominations of the Governor.

House Concurrent Resolution 4

The President laid before the Senate at this time:

H. C. R. No. 4, Providing for a joint legislative committee to arrange for the inauguration of the Governor-Elect and Lieutenant Governor-Elect.

The resolution was read and was referred by the President to the Committee on Finance.

House Concurrent Resolution 3

The President laid before the Senate:

H. C. R. No. 3, Providing for a joint session of the House and Senate at 3:00 o'clock p. m. January 12, 1939, to count the votes cast for Governor and Lieutenant Governor at the last general election.

The resolution was read.

On motion of Senator Martin and by unanimous consent, the resolution was considered at this time and was adopted.

Message from the House

A Clerk from the House was recognized to present the following message:

Hall of the House of Representatives,
Austin, Texas,
January 11, 1939.

Hon. Walter F. Woodul, President of the Senate.

Sir: I am directed by the House to inform the Senate that the House has passed the following bill:

H. B. No. 1, A bill to be entitled "An Act making an appropriation of the sum of Two Hundred and Fifty Thousand Dollars (\$250,000.00), or so much thereof as may be necessary, out of any funds in the State Treasury, not otherwise appropriated, to pay the contingent expenses, and to pay the mileage and per diem of Members and the per diem of officers and employes of the Regular Session of the Forty-sixth Legislature, and to pay any unpaid accounts of the Second Called Session of the Forty-fifth Legislature, and declaring an emergency."

Respectfully submitted,
LOUISE SNOW PHINNEY,
Chief Clerk, House of Representatives.

Senate Resolution 7

Senator Collie, by unanimous consent, offered at this time the following resolution:

Be It Resolved by the Senate of the Forty-sixth Legislature of Texas, That the Lieutenant Governor-Elect and each of the new Senators serving their first term in the Senate, be furnished a copy of Vernon's Texas Statutes, Centennial Edition, 1936; that the Lieutenant Governor, the said Lieutenant Governor-Elect, the entire membership of the Senate, the Secretary of the Senate and the Librarian, each be furnished a copy of the Supplement or Supplements, to said Statutes, bringing the laws down to date. The expense thereof to be paid out of the contingent expense fund of the Senate.

(Signed) Collie, Hill, Head, Winfield, Stone of Washington, Isbell, Lemens, Martin, Burns, Redditt, Beck, Shivers, Cotten, Aikin, Moffett, Graves, Hardin, Pace, Lanning, Sulak, Van Zandt, Roberts, Small, Brownlee and Metcalfe.

The resolution was read, and by unanimous consent, it was considered at this time and was adopted.

House Bill 1 on First Reading

H. B. No. 1, received from the House today, was laid before the Senate, read first time and referred to the Committee on Finance.

Motion to Reconsider Vote Adopting Senate Rules

The Senate resumed consideration of the motion of Senator Sulak to

reconsider the vote by which the resolution providing for temporary rules was adopted on yesterday.

Pending consideration of the motion to reconsider, Senator Aikin occupied the Chair temporarily.

(President in the Chair.)

Senator Van Zandt moved to table the motion to reconsider.

Yeas and nays were demanded, and the motion to table prevailed by the following vote:

Yeas—17

Brownlee	Shivers
Collie	Small
Graves	Stone
Isbell	of Galveston
Kelley	Stone
Martin	of Washington
Moore	Van Zandt
Pace	Weinert
Redditt	Winfield
Roberts	

Nays—12

Aikin	Lanning
Beck	Lemens
Burns	Metcalfe
Cotten	Moffett
Hardin	Nelson
Hill	Sulak

Absent

Head	Spears
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Senate Bills on First Reading

By unanimous consent, the following bills were introduced, read severally, and referred to the committees indicated:

By Senator Burns:

S. B. No. 19, A bill to be entitled "An Act repealing Article 6203, Revised Civil Statutes of 1925, as amended by Chapter 45, Acts of the Forty-first Legislature, First Called Session, Chapter 9, Fourth Called Session of the Forty-first Legislature, and Chapter 11, Fifth Called Session of the Forty-first Legislature, creating a Board of Pardons and Paroles, fixing their terms of office, providing a method of appointment thereto and authorizing recess appointments; limiting the power of the Governor in the matter of reprieves, commutations of punishment and pardons; providing for one reprieve of not more than thirty (30) days in any

capital case; empowering the Governor to revoke paroles and other forms of clemency; fixing the salaries of the members of the Board of Pardons and Paroles and providing for traveling expenses and accommodations, and empowering them to employ a secretary, a state parole supervisor and other employees; providing for the organization of the Board; providing that the chairman shall be elected by the Board; providing for removal of Board members for cause; providing for the maintenance of offices and location of same; granting authority to Board to promulgate rules and regulations; empowering the Governor to appoint non-paid county parole boards, and citing their duties; providing for a parole supervisor and citing his duties; providing for probation officers to become parole officers; providing that the Board of Pardons and Paroles shall determine which prisoners shall be released from the penitentiary before the expiration of their maximum term; providing for regular meetings of the Board; providing that certain factors are to be considered in cases where parole is under consideration; providing considerations in the matter of pardons; citing powers of the Board in all cases; providing that the General Manager of the Texas Prison System, in so far as his records will allow, furnish the Board of Pardons and Paroles with a complete social and criminal record of each prisoner in his charge; providing that the General Manager shall furnish list of men eligible for parole shall be supplied with application forms; determining how prisoners serving sentence in the penitentiary shall become eligible for parole, and the manner and condition of release; providing limitations of eligibility for parole of persons whose sentences are commuted from death to life sentence; providing for furloughs and limiting length of time they may be granted; giving applications for furlough precedence on the docket of the board; providing for personal interview by the Board or any designated member thereof with persons eligible for parole; providing procedure in case of prisoner violating prison rules prior to release on parole; providing for the board to specify the conditions of parole; providing for clothing, transportation and money for prisoners released on parole; authorizing apprehension of persons who have violated or are about

to violate terms of parole; providing for hearings of retaken and returned parole violators; providing the method of computing a prisoner's time served; providing for imposition of unserved term in cases where felony is committed while prisoner is on parole; providing for discharge while on parole; establishing a method of application for restoration of citizenship and full rights and privileges of suffrage; providing for automatic restoration of rights of citizenship in certain cases; providing for filing proclamation or release form by the Governor with Secretary of State in which reasons for granting or denying parole or clemency are set out; declaring that if any part of this Act shall be held unconstitutional or invalid the remainder shall remain in force and effect, and declaring an emergency."

Referred to Committee on Penitentiaries.

By Senator Burns:

S. B. No. 20, A bill to be entitled "An Act amending Chapter 212, Section 25 of the General Laws of the Regular Session of the Fortieth Legislature, 1927, and amended by Chapter 229, Regular Session of the Forty-first Legislature, 1929, relating to overtime to be allowed prisoners in the Texas Penitentiary, providing that the General Manager shall have the authority to designate the overtime rates for special work, defining what constitutes a day in overtime work and fixing the date when this Act shall become effective, and declaring an emergency."

Referred to Committee on Penitentiaries.

By Senator Shivers:

S. B. No. 21, A bill to be entitled "An Act to amend the subject matter embraced in Section 3, Section 4, Section 7, Section 13, and Section 19 of Chapter 482, Acts of the Forty-fourth Legislature, Third Called Session, as amended by Section 1, Section 2, Section 3, Section 5, and Section 7, respectively, of Chapter 67, Acts of the Forty-fifth Legislature, Regular Session, and Section 5, Section 6, Section 8, Section 9, Section 14, and Section 16 of Chapter 482, Acts of the Forty-fourth Legislature, Third Called Session; imposing a tax on employers of six or more persons; providing for benefits; fixing benefit eligibility conditions and certain dis-

qualifications for benefits; providing a merit rating for determining the amount of contributions by employers; fixing the duration of coverage; making provisions with reference to the administration of the Unemployment Compensation Fund; and with reference to the administration of the Unemployment Compensation Administration Fund; providing additional means for the enforcement of the collection of contributions; adding certain penalty provisions; defining certain additional terms; adding new sections to be known as Section 19-A and Section 19-B, which provide for the effective date of this Act and for the repeal of all laws and parts of laws in conflict herewith; and declaring an emergency."

Referred to Committee on State Affairs.

By Senators Van Zandt, Metcalfe and Aikin:

S. B. No. 22, A bill to be entitled "An Act appropriating the sum of One Million One Hundred and Seventy-three Thousand Three Hundred and Eighty-four (\$1,173,384) Dollars as a supplement to the equalization appropriation for the biennium as passed by the Forty-fifth Legislature; providing no school shall benefit hereunder that has paid its public funds to any person for securing legislative aid; providing the funds herein appropriated are to be expended in accordance with the provisions of this Act; providing the funds herein appropriated are to be prorated on a percentage basis to those schools having had payments made on a percentage basis, to make the grants of teachers salaries, of high school tuition, and of transportation, and of vocational agriculture, home economics, trade and industries, each as nearly as possible one hundred per cent; providing no school shall receive reimbursement which was not approved for payment at the end of the 1937-1938 fiscal year; providing a penalty for violating the provisions of this Act; setting aside the sum of Twelve Thousand Five Hundred (\$12,500.00) Dollars to the Division of Census for the purpose of checking and making transfers and census; setting aside the sum of Twenty-five Hundred (\$2,500.00) Dollars to the Division of Equalization for the purpose of expediting the payments of those funds;

providing for the payment of warrants issued for any of the above claims; and declaring an emergency."

Referred to Committee on Finance.

By Senator Roberts:

S. B. No. 23, A bill to be entitled "An Act amending Chapter 277, Acts of the Regular Session of the Forty-second Legislature, as heretofore amended, designating said Act as the 'Motor Carrier Act of Texas' and adding the sections thereto contained in this Act, to be known as the 'Private Motor Carrier Act of Texas'; providing that said Motor Carrier Act shall not apply to a private carrier, as herein defined, except as specifically provided by this Act; defining a private carrier and stating the qualifications necessary to qualify as such; defining a fixed and established place of business; defining the term 'person'; defining the term 'Commission'; providing for certain exemptions from the terms of this Act; providing that the use of the highways by private carriers, as herein defined, shall not be regarded as the use of such highways for transporting property for compensation or hire; making it unlawful for a private carrier to operate without a permit, and that no such permit shall be issued until the applicant shall have in all things complied with the requirements of this Act; providing for a written application and the information to be contained therein; providing that it shall be the duty of the Railroad Commission to issue permits to private carriers in compliance with the terms of this Act and the rules and regulations of the Railroad Commission; giving the Railroad Commission authority to reject the application, if not in compliance with said Act and its rules and regulations; providing for the payment of a filing fee and making it unnecessary for a private carrier to have more than one permit; providing for the placing in service of additional motor vehicles by private carriers and the payment of a fee to the Railroad Commission for the plates to be attached to such vehicles; giving the Railroad Commission authority to prescribe identification card which must be displayed within the cab of each motor vehicle operated by a private carrier; making it unlawful for a private carrier to operate a vehicle unless there is displayed thereon identification plates issued by

the Railroad Commission and making it the duty of the Railroad Commission to furnish such plates at a fee of Two Dollars for each pair; providing that it shall be necessary for private carriers to furnish insurance and bonds for the protection of the public; providing that each driver of a motor vehicle operated by a private carrier shall have a chauffeur's license issued by the Department of Public Safety; and providing that such chauffeur's license may be cancelled for cause after notice and hearing and that it shall be the duty of the Railroad Commission to cancel the private carrier's permit when notified that such vehicles are being operated by a driver without a chauffeur's license; providing for the number of hours that a driver may lawfully drive or operate a vehicle; declaring that it is the intent of the Legislature that the use of the highways by the private carriers, herein defined, is not a use for hire, but is declared to be the use of the highways by the general public; requiring that interstate carriers comply with the terms of this Act; providing that the funds paid to the Commission under the terms of this Act shall be deposited in the State Treasury and credited to the Motor Carrier Fund of the Railroad Commission; giving the Railroad Commission the authority to appoint certain employees and fixing the compensation therefor; providing that the provisions of this Act shall not apply to the State or any political subdivision thereof; providing for the cancellation of a private carrier's permit by the Railroad Commission; providing for filing complaints, issuance of notices and hearings upon such complaints by the Railroad Commission; giving Railroad Commission authority to make rules and regulations for the enforcement of this Act; making it unlawful for a person to own more than one kind of permit or certificate at the same time; providing that private carrier's permit shall be transferable; vesting in the inspectors of the Motor Transportation Division of the Railroad Commission and the License and Weight Inspectors of the Department of Public Safety exclusive authority to make arrests for the violation of the penal provisions of the laws of this State regulating private carriers and carriers for hire; making it unlawful and providing a penalty for the operation of vehicles by pri-

ate carriers without a private carrier's permit; making it unlawful and providing a penalty for the violation of any provision of the Act or the violation of any order, decision, rule or regulation of the Railroad Commission, and providing an additional civil penalty for such violations and placing the venue for the recovery of such civil penalties in any court of competent jurisdiction in Travis County, Texas, or in the county in which the violation occurs; and providing that district courts of this State shall have jurisdiction to issue injunctions to prevent violation of this Act or of the rules and regulations of the Railroad Commission; making it unlawful for a private carrier to engage in the business of transporting the property of others for compensation or hire or the transportation of property without such carrier having a fixed or established place of business, or the transportation of property by a private carrier of goods of which he is not the owner shall be guilty of a misdemeanor and upon conviction assessed a fine not to exceed Two Hundred Dollars; a saving clause; declaration of legislative intent, and declaring an emergency."

Referred to Committee on State Highways and Motor Traffic.

By Senator Roberts:

S. B. No. 24, A bill to be entitled "An Act amending Subdivision (a) of Section 9 of Article IV of Chapter 495 of the Acts of the Third Called Session of the Forty-fourth Legislature, so as to limit the operation of said Subdivision to purchase money notes and obligations secured by any written instruments evidencing a lien or retention of title which are filed or recorded in the office of the county clerk under the registration laws of this State, and to exempt from its provisions notes and obligations or instruments securing same taken by or on behalf of the State of Texas or any corporate agency of instrumentality of the State of Texas, in carrying out a governmental purpose as expressed in any act of the Legislature of the State of Texas, and declaring an emergency."

Referred to Committee on Civil Jurisprudence.

By Senator Moffett:

S. B. No. 25, A bill to be entitled "An Act authorizing the refunding of

Texas relief bonds, first series, prescribing the duties and authority of the Texas Bond Commission in connection with the calling and refunding of said bonds at a lower rate of interest, prescribing the terms and conditions for the issuance and payment of said refunding bonds, providing that Section 5 of Chapter 37, Acts of the First Called Session of the Forty-third Legislature, shall not apply to said refunding bonds, making an appropriation for the payment of principal and interest of said refunding bonds for the biennium ending August 31, 1941, and declaring and emergency."

Referred to Committee on State Affairs.

Senate Resolution 8

Senator Moore, by unanimous consent, offered at this time the following resolution:

Be It Resolved by the Senate of Texas, That the Sergeant-at-Arms be instructed to clear the floor of the Senate 30 minutes before the Senate convenes each morning; and that no one be allowed thereon from that time until the Senate convenes other than those entitled to the privileges of the floor when the Senate is in session.

MOORE,
WEINERT.

On motion of Senator Moore and by unanimous consent, the resolution was considered at this time and was adopted.

Adjournment

On motion of Senator Shivers, the Senate, at 1:10 o'clock p. m., adjourned until 10:00 o'clock a. m. tomorrow.

THIRD DAY

(Thursday, January 12, 1939)

The Senate met at 10:00 o'clock a. m., pursuant to adjournment, and was called to order by President Woodul.

The roll was called, and the following Senators were present:

Aikin
Beck
Brownlee
Burns
Collie
Cotten
Graves
Hardin
Head
Hill
Isbell
Kelley
Lanning
Lemens
Martin
Metcalf
Moffett

Moore
Nelson
Pace
Redditt
Roberts
Shivers
Small
Spears
Stone
of Galveston
Stone
of Washington
Sulak
Van Zandt
Weinert
Winfield

A quorum was announced present.

The invocation was offered by the Chaplain.

On motion of Senator Metcalfe and by unanimous consent, the reading of the Journal of the proceedings of yesterday was dispensed with and the Journal was approved.

Report of Standing Committee

The following report of the Committee on Finance was submitted by Senator Redditt:

Senate Chamber,
Austin, Texas,
January 12, 1939.

Honorable Walter F. Woodul, President of the Senate.

Sir: We, your Committee on Finance, to whom was referred

H. B. No. 1, A bill to be entitled "An Act making an appropriation of the sum of Two Hundred and Fifty Thousand Dollars (\$250,000.00), or so much thereof as may be necessary, out of any funds in the State Treasury, not otherwise appropriated, to pay the contingent expenses, and to pay the mileage and per diem of members and the per diem of officers and employes of the Regular Session of the Forty-six Legislature and to pay any unpaid accounts of the Second Called Session of the Forty-fifth Legislature, and declaring an emergency."

Have had the same under consideration, and I am instructed to report it back with recommendation that it do pass and be not printed.

ROBERTS, Chairman.

Senate Bills on First Reading

The following Senate bills were introduced, read severally first time,